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FISCAL IMPACT STATEMENT

LS 6584
BILL NUMBER: SB 581

NOTE PREPARED: Jan 9, 2013
BILL AMENDED:

SUBJECT: Immigration Matters.

FIRST AUTHOR: Sen. Tallian
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
X **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill repeals or removes provisions concerning the following:

- (1) Requiring the Office of Management and Budget to calculate the costs of illegal aliens to Indiana and make a written request to the Congress of the United States to reimburse the state for those costs not later than July 1, 2012.
- (2) Prohibiting governmental bodies from limiting or restricting:
 - (A) certain actions by other governmental bodies with regard to information of the citizenship or immigration status of an individual; and
 - (B) the enforcement of federal immigration laws to less than the full extent permitted by federal law.
- (3) Disallowing certain state income tax credits and deductions for individuals who are prohibited from being hired as employees, unless the employer participated in the electronic verification work authorization program (E-Verify program).
- (4) Requiring the Department of Correction to verify the citizenship or immigration status of criminal offenders.
- (5) Requiring an agency or political subdivision to verify the eligibility of an individual who applies for federal, state, or local public benefits.
- (6) Requiring the Department of Workforce Development (DWD) to verify the status of an individual as a qualified alien through the Systematic Alien Verification for Entitlements (SAVE) program to determine the individual's eligibility for unemployment compensation benefits.
- (7) Authorizing DWD to file civil actions to obtain the reimbursement of amounts paid as unemployment insurance benefits from employers that knowingly employed unauthorized aliens.
- (8) Requiring state agencies, political subdivisions, contractors with public contracts for services with the state

or a political subdivision, and certain business entities to use E-Verify.

(9) Requiring certain subcontractors to certify that they use E-Verify.

(10) Allowing a state agency or political subdivision to terminate a public contract for services with a contractor for breach of the public contract for services if the contractor knowingly employs an unauthorized alien.

(11) Prohibiting individuals from commencing day labor without completing an attestation required under federal law.

(12) Establishing certain state crimes, including:

(A) offenses related to consular identification;

(B) false identity statement;

(C) knowingly or intentionally transporting or moving an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law; and

(D) knowingly or intentionally concealing, harboring, or shielding from detection an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

(13) Requiring law enforcement officers to impound motor vehicles for violations of crimes related to moving, transporting, concealing, harboring, or shielding from detection aliens.

(14) Allowing a law enforcement officer to arrest a person if the officer has a certain removal order, detainer, or notice of action issued for the person or if the officer has probable cause to believe the person has been indicted for or convicted of one or more certain aggravated felonies.

(15) Requiring a judicial officer in setting bail to consider that the defendant is a foreign national who has not been lawfully admitted to the United States as relevant to the risk of nonappearance.

(16) Establishing certain bond requirements if bail is set for a defendant who is a foreign national unlawfully present in the United States.

Effective Date: July 1, 2013.

Explanation of State Expenditures: *Summary:* This bill could;

(1) Impact postsecondary education institution benefits administered by the State Student Assistance Commission of Indiana (SSACI);

(2) Reduce Indiana State Police (ISP) workload by repealing certain criminal offenses;

(3) Decrease the workload of the Office of the Attorney General to defend provisions of the SEA 590-2011 that are currently subject to pending litigation and repealed in this bill;

(4) Decrease Department of Correction (DOC) expenditures to house offenders convicted of criminal penalties repealed in the bill; and

(5) Increase Department of State Revenue (DOR) and Indiana Economic Development Corporation (IEDC) costs to revise forms, update instructions, and modify software packages.

Additional Information:

Office of Management and Budget (OMB): Repealing the requirement that the OMB calculate the costs of illegal immigration in the state and submit a written request to the U.S. Congress for reimbursement of those costs will have no fiscal impact. The calculations and formal request was sent to Congress in July of 2012.

Legal Status Verification for Public Benefits: Prior to SEA 590-2011, Indiana Code specified that illegal immigrants were not eligible for public assistance benefits (Temporary Assistance for Needy Families, Medicaid, Unemployment Insurance). Additionally, prior to SEA 590, any benefit administered by the state but funded in full or in part by the federal government utilized the SAVE program to verify the lawful status of applicants.

However, the resident tuition rate and a postsecondary award, scholarship, grant, and financial aid provided by a state postsecondary education institution is considered a public benefit. To the extent this bill increases the number of individuals who are eligible for the resident tuition rate or tuition assistance at a state education institution, this bill could impact benefits administered by the State Student Assistance Commission of Indiana as well as revenue that state education institutions receive from tuition.

Prior to passage of SEA 590-2011, the Division of Family Resources (DFR) required a declaration of citizenship and immigration status during the application process for public benefits. Individuals underwent an interview with program administrators to determine legal status of the applicant. Applicants were required to sign an Application for Assistance Client Certification form that certifies under penalty of perjury that all information about citizenship status was complete and accurate to the best of the applicant's knowledge. Any inability or unwillingness to complete the application resulted in the individual being considered an undocumented immigrant for public benefits.

Department of Workforce Development (DWD): Under SEA 590-2011, the DWD is required to use the SAVE program to verify noncitizens and foreign nationals for eligibility for unemployment benefits. Prior to the passage of SEA 590 - 2011, the DWD processed all applicants for unemployment benefits through the SAVE program and paid associated fees for these verifications. Repealing the requirement that DWD verify noncitizen and foreign national eligibility for unemployment benefits through SAVE is expected to have no fiscal impact.

Penalty Provisions: This bill will repeal the following penalties that have not been enjoined in federal court:

- (1) Knowingly or intentionally transporting or moving an alien for commercial advantage or financial gain, a Class A misdemeanor, and if involving nine or more aliens, a Class D felony.
- (2) Knowingly or intentionally concealing, harboring, or shielding an alien from detection, a Class A misdemeanor, and if involving nine or more aliens, a Class D felony.
- (3) False identity statement, a Class A misdemeanor.
- (4) Knowingly or intentionally making a false, fictitious, or fraudulent statement in an affidavit required for public benefits (federal, state, or locally funded in whole or in part), a Class D felony.

As a result, this bill could potentially decrease the future workload of the Indiana State Police to arrest and process individuals found to have violated these criminal penalties. Additionally, the bill could decrease DOC costs to house offenders in state facilities. Using DOC offender population statistics for November 1, 2012, there were no offenders in DOC custody who had committed felony offenses repealed by this bill.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner. However, any reduction in DOC expenditures are likely to be small. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Legal Challenges for SEA 590-2011: Certain provisions of SEA 590 have been challenged in federal court and remain unenforced as a result. Namely, specific provisions under challenge include the requirements that allow a law enforcement officer to make warrantless arrests and criminal penalties involving a consular identification card.

The Attorney General has publicly stated he will not defend the enjoinder against the warrantless arrest provision of SEA 590 because the U.S. Supreme Court has already ruled this provision unconstitutional in *Arizona v. U.S.*. However, the Attorney General is currently appealing the enjoinder of the criminal penalties associated with use and acceptance of a consular identification card.

Because these provisions are currently enjoined, repealing the requirements is only expected to reduce the workload of the Attorney General to appeal the enjoinder on criminal penalties associated with a consular identification card.

Department of State Revenue: The DOR will incur additional expenses to revise forms, update instructions, and modify software applications. Their current level of staffing and resources should be sufficient to implement the changes within the bill.

Indiana Economic Development Corporation: The IEDC will incur additional expenses to update documentation and procedures necessary to compute Economic Development for a Growing Economy (EDGE) credits. Their current level of staffing and resources should be sufficient to implement the changes required in the bill.

Department of Corrections: The bill repeals requirements that the DOC evaluate committed offenders' citizenship status with the United States Department of Homeland Security. Prior to the passage of SEA 590-2011, the DOC already performed this function. Repealing this requirement is expected to have no fiscal impact on the DOC.

Explanation of State Revenues: *Summary:* This bill could:

- (1) Impact state tax revenue received by repealing the add back for certain trade or business deductions based on the employment of unauthorized aliens;
- (2) Impact state tax revenue from EDGE tax credits;
- (3) Decrease state revenue received from the repayment of any unemployment insurance benefits provided to illegal immigrants; and
- (4) Decrease revenue the state could have received from criminal penalty fines.

Additional Information:

Department of State Revenue: This bill repeals the add back for certain trade or business deductions based on the employment of unauthorized aliens. Under current law, taxpayers are required to add back any deductions allowed under the Internal Revenue Code for wages, reimbursements, or other payments made for services if the person was prohibited from being hired as an employee under 8 U.S.C. 1324a unless the employer is enrolled in the E-verify program. This applies to Individual Adjusted Gross Income (AGI) Tax, Corporate AGI Tax, and Financial Institutions Tax. Revenue collected from those taxes is deposited in the state General Fund. The repeal goes into effect on July 1, 2013. Because the repeal goes into effect in the middle of a taxable year,

any revenue impact will begin in FY 2014, but the full impact will be realized in FY 2015.

Indiana Economic Development Corporation: The bill repeals the provision that unauthorized workers are to be excluded from the calculation of EDGE tax credits. The EDGE credit is for businesses that either create new investment and jobs in Indiana or undertake projects to retain existing jobs in Indiana. EDGE credits are determined by the IEDC, but may not exceed the incremental income tax withholdings of new or retained employees. EDGE is a refundable credit and may be used to offset tax liabilities of the Individual AGI Tax, Corporate AGI Tax, Financial Institutions Tax, and Insurance Premiums Tax. Any reduction in EDGE credits from repealing this provision would likely be small.

Repayment of Unemployment Insurance Benefits: The bill repeals parts of SEA 590-2011 that required employers to repay any unemployment insurance benefits paid to illegal aliens. By law, individuals who are not lawfully present in the United States are not eligible to receive unemployment insurance benefits. Therefore, it is expected there have been (1) no unemployment insurance benefits provided to illegal aliens and (2) no actions taken against employers for reimbursement of unemployment insurance benefits improperly provided to illegal aliens.

The Department of Workforce Development did not respond to requests for information on any proceedings and revenue collected from reimbursement of unemployment insurance benefits provided to illegal aliens. However, this bill could reduce revenue collected from reimbursement of unemployment insurance benefits that is deposited in the Unemployment Insurance Benefit Fund.

Penalty Provision: If there is a reduction in court cases where fines would have been collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) could decrease. The maximum fine for a Class D felony is \$10,000 and for a Class A misdemeanor, \$5,000. However, any reduction in revenue would likely be small.

Explanation of Local Expenditures: *Bail Requirement:* Under SEA 590-2011, apprehended unauthorized aliens are required to provide 100% of the bail requirement created by the court. Repealing this requirement could decrease the number of defendants held in county jails awaiting trial (and local expenditures to house offenders). It is not known how many foreign nationals who are apprehended are subjected to higher bond requirements because they are considered a greater flight risk by the court. The average cost per day for incarceration is approximately \$44.

Penalty Provision: By repealing certain criminal provisions created in SEA 590-2011, this bill could reduce the workload of local law enforcement to arrest and process individuals found to have violated these criminal provisions. Decreases in workload are unknown.

Additionally, this bill could reduce the number of offenders in local correctional facilities by repealing Class A misdemeanor and Class D felony penalties. A Class A misdemeanor is punishable by up to one year in jail. If fewer defendants are detained in county jails for Class D felony proceedings prior to their court hearings, local expenditures for jail operations may decrease. However, any reduction in expenditures would likely be small.

Explanation of Local Revenues: *Bail Requirement:* This bill repeals requirements where apprehended unauthorized aliens are required to provide 100% of the court-ordered bail requirement. As a result, this bill could decrease revenue local governments received from forfeited bail. Normally when bails are forfeited, local

funds receive a portion of the bond revenue and a portion is deposited in the state Common School Fund. Some fees may also be collected by local governments, depending on the form of pretrial release.

Penalty Provision: If a reduction court actions occur where a guilty verdict would have been entered, local governments would receive less revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Office of the Attorney General; DOR; IEDC; DOC; DWD; Family and Social Services Administration.

Local Agencies Affected: Courts, local law enforcement, local correctional facilities.

Information Sources: Matt Light, Office of the Attorney General; DOR; IEDC; Tim Brown, DOC; Christina Hage, Family and Social Services Administration.

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